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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 PRAGER UNIVERSITY,

Case No.

16 Plaintiff,

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY JUDGMENT**

17 vs.

18 GOOGLE INC., a Delaware corporation,
YOUTUBE, LLC, a Delaware limited liability
company, and DOES 1-25,

JURY TRIAL DEMANDED

19 Defendants.

Trial Date: None Set

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Case No.

COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, AND DECLARATORY JUDGMENT

1 Plaintiff Prager University (“PragerU”) brings this complaint for damages and equitable relief
 2 against Defendants YouTube, LLC (“YouTube”) and its parent company, Google Inc. (Google),
 3 collectively referred to as “Google/YouTube” or “Defendants,” unless otherwise specified.

4 **INTRODUCTION AND PREFATORY STATEMENT**

5 1. PragerU brings this lawsuit to stop Google/YouTube from unlawfully censoring its
 6 educational videos and discriminating against its right to freedom of speech solely because of
 7 PragerU’s political identity and viewpoint as a non-profit that espouses conservative views on current
 8 and historical events. Google/YouTube have been discriminating and censoring, and continue to
 9 discriminate and censor educational videos uploaded or posted to the YouTube platform through the
 10 arbitrary and capricious use of “restricted mode” and “demonetization” viewer restriction filters that
 11 purportedly are intended to prohibit or limit access of “inappropriate” content to prospective public
 12 viewers based on certain viewer characteristics, including the age of the viewer.

13 2. Google/YouTube operate the largest forum for the general public to participate in
 14 video based expression and exchange of speech in California, the United States, and the world.
 15 Indeed, Google/YouTube has created the largest forum for video based speech by members of the
 16 general public in the history of the United States and the world. The total number of people who
 17 currently use the YouTube service exceeds 1.3 billion people and more than 30 million members of
 18 the general public visit the platform every day. Four hundred (400) hours of videos are uploaded to
 19 the service every hour and the total number of hours in which people watch videos on YouTube is
 20 estimated to be 3.25 billion. One report estimated that 10,113 YouTube videos generated over
 21 1 billion views and the average number of mobile YouTube views is estimated to be about 1 billion
 22 per day and YouTube videos can be navigated in at least 76 different languages. Indeed more video
 23 content has been uploaded to Google/YouTube by public users than has been created by the major
 24 U.S. television networks in 30 years.

25 3. In so doing, Google/YouTube hold YouTube out to the public as a forum intended to
 26 defend and protect free speech where members of the general public may speak, express, and
 27 exchange their ideas. YouTube plays a role of a public forum where, based on the number of views,
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1 likes, and subscriptions, new celebrities emerge and new ideas are popularized. And
 2 Google/YouTube have represented that their platforms and services are intended to effectuate the
 3 exercise free speech among the public. According to Google/YouTube “voices matter” and YouTube
 4 is “committed to fostering a community where everyone’s voice can be heard.”

5 4. As applied to PragerU, Google/YouTube use their restricted mode filtering not to
 6 protect younger or sensitive viewers from “inappropriate” video content, but as a political gag
 7 mechanism to silence PragerU. And Google/YouTube do this not because they have identified video
 8 content that violates their guidelines or is otherwise inappropriate for younger viewers, but because
 9 PragerU is a conservative nonprofit organization that is associated with and espouses the views of
 10 leading conservative speakers and scholars. This is speech discrimination plain and simple:
 11 censorship based entirely on the perceived identity and political viewpoint of the speaker not on the
 12 content of the speech. Google/YouTube’s use of restricted mode filtering to silence PragerU violates
 13 its fundamental First Amendment rights under both the California and United States Constitutions,
 14 constitutes unlawful discrimination under California law, is a misleading and unfair business practice,
 15 and breaches the warranty of good faith and fair dealing implied in Google/YouTube’s Terms of Use,
 16 including their guidelines and policies for restricted access filtering of video content.

17 5. Furthermore, Google/YouTube’s purported use of vague, overbroad, and subjective
 18 criteria, including YouTube’s Terms of Use and Community Guidelines, to justify their censorship
 19 decisions constitute facially invalid restrictions on speech that lack objective criteria, are misleading,
 20 and/or are discriminatory, and, as a result, allow Google/YouTube to censor or restrict political
 21 speech at their whim based purely their subjective beliefs, political animus, and unfettered and
 22 unbridled discretion in violation of federal and state law.

23 6. And while Google/YouTube may lawfully regulate or restrain speech in certain
 24 circumstances to the extent that such restrictions constitute reasonable and objective time, manner,
 25 place restrictions that comport with federal and California legal standards for the regulation of
 26 speech, it may not do so at will without any restrictions or in an arbitrary or capricious manner that
 27 provides them with unbridled discretion to discriminate against a speaker based on her or his identity
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1 or political viewpoint. Nor can Google/YouTube rely on criteria, like their Terms of Use or
 2 Community Guidelines, that are so vague, broad, or undefined that they may serve or be used as a
 3 pretext to censor or discriminate against speakers because of a bias or animus towards political
 4 identity or viewpoint.

5 7. PragerU is an educational nonprofit founded in 2011 by Dennis Prager, a conservative
 6 talk show host. Its mission is to provide educational and news based platforms to promote open and
 7 balanced discussions of historical or current issues from a conservative perspective. There is
 8 absolutely nothing “inappropriate” about the content of the PragerU videos censored by
 9 Google/YouTube. The videos utilize news interview or animation formats to discuss current and
 10 historical events and issues, including, by way of example only, discussions of the history of the
 11 Korean War, legal decisions by courts including landmark rulings of the United States Supreme
 12 Court, and trending current events such as foreign affairs, male-female differences, environmental
 13 issues and other topics discussed on university campuses. The videos do not contain any profanity,
 14 nudity, or otherwise inappropriate “mature” content. The censored videos fully comply with the
 15 letter of YouTube’s Terms of Use and Community Guidelines.

16 8. As set forth below, a review and comparison of Prager U’s videos with unrestricted
 17 videos produced and posted by other groups with different political identities shows that
 18 Google/YouTube’s use of restricted mode filtering to censor PragerU is arbitrary, capricious, and
 19 bears no relationship to the actual content of the videos. Indeed, one need only compare the censored
 20 PragerU videos with those that are produced by speakers with different political identities or
 21 viewpoints to understand just how arbitrary and discriminatory Google/YouTube’s conduct is. To
 22 that end, a table¹ comparing the content and subject matter of the censored PragerU videos with
 23 uncensored videos discussing the same issues by speakers and channels like Crash Course, NowThis,
 24 AJ+ (Al Jazeera), Buzzfeed, Bill Maher, TedTalkx, the History Channel, and many others, some of

25
 26 ¹ For convenience, two “Tables of Comparison” are embedded in Paragraphs 70 and 72, respectively
 27 each of which provides a summary of the subject matter of both censored PragerU videos and non-
 censored videos from other speakers along with website hyperlinks that allow the reader to view and
 compare the full content of the respective videos.
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1 which contain profanity and graphic depictions of mature content, leaves little doubt that
 2 Google/YouTube are not restricting PragerU's videos because of noncompliance with any guidelines
 3 or terms of use, but are discriminating against and censoring PragerU because of its political identity
 4 or viewpoint not the content of its speech.

5 9. Since the inception of Google/YouTube's censorship of PragerU videos, first
 6 discovered by PragerU staff members in July 2016, Google/YouTube have failed to offer any
 7 reasonable or consistent explanation for why the content of those videos is subject to restricted
 8 content filtering. Instead, Google/YouTube have repeatedly stated that Google/YouTube's automatic
 9 filtering search algorithm and their "review teams" have flagged some unspecified or unidentified
 10 video content as "inappropriate." This is telling because despite the existence of purported guidelines
 11 and criteria utilized by both the algorithm and review teams, Google/YouTube's censoring criteria are
 12 intentionally vague, undefined, and broad and are designed to allow it to exercise unfettered,
 13 unilateral, unbridled, and purely subjective discretion as to what is and is not appropriate. In so
 14 doing, Google/YouTube are censoring PragerU's videos not based on any objective finding of
 15 inappropriate material, but on their purely subjective perception of what they deems politically correct
 16 and incorrect. In short, Google/YouTube created a purely subjective and unspecific criteria for
 17 determining what is and is not appropriate in order to justify censorship based not on content, but the
 18 political viewpoint and perceived identity of the speaker.

19 10. PragerU is not the first video blogger or "vlogger" to be discriminated against by
 20 Google/YouTube because of the speaker's perceived identity. On March 19, 2017, Google/YouTube
 21 publicly admitted that they improperly censored videos using their restricted mode filtering that were
 22 posted or produced by members of the LGBTQ community based on the identity and orientation of
 23 the speaker rather than the content of the video. In response to complaints from the LGBTQ
 24 community and other civil rights critics, Google/YouTube removed all restricted filtering on videos
 25 posted or produced by LGBTQ members and groups, and changed their policy, filtering algorithm,
 26 and manual review policies to ensure that videos posted by LGBTQ vloggers were not being censored
 27 solely because of the identity of the speaker.

1 11. Such a censorship regime cannot pass muster under the First Amendment and is
2 discriminatory and unlawful under California law. Among other things, it provides Google/YouTube
3 with unfettered and unbridled discretion to impose their own political views and values on speakers
4 without any objective criteria for evaluating what is and is not appropriate and thereby censors speech
5 based on animus towards the speaker's political viewpoint rather than the appropriateness of the
6 content of the video. It also constitutes intentional discrimination by Google/YouTube based on the
7 religious, political, or sexual orientation beliefs of the speaker. It also violates the warranty of good
8 faith and fair dealing implied in the Terms of Use and video posting guidelines and policies that
9 PragerU was required to agree to in order to use the YouTube site. And they do all of this in
10 connection with their control and management of what is arguably the largest public forum for the
11 expression and exchange of ideas and speech that has ever been available to the public in California,
12 the United States, and ultimately the world—one to which Google/YouTube invite the public to
13 express themselves in all manner of speech, and to engage with such speech through viewing and
14 commenting.

15 12. Despite telling the public that Google/YouTube "products are platforms for free
16 expression," no such good faith treatment has been afforded PragerU. PragerU has endeavored with
17 patience and civility to navigate the red tape process for removing restricted filtering. PragerU has
18 fully complied with Google/YouTube's demands that PragerU formally seek reconsideration of the
19 "inappropriate" designation of its videos. To that end, PragerU in good faith provided
20 Google/YouTube with specific examples of its videos along with comparisons of other similar
21 material that do not share an inappropriate designation from other producers. As of this date,
22 however, at least 37 PragerU videos continue to be censored by restricted mode filtering. And when
23 it requested that Google/YouTube treat these and other videos in the same manner as those from other
24 vloggers, including those of LGBTQ vloggers, Google/YouTube refused, on the pretextual ground
25 that manual reviewers had determined that educational content ranging from the legal creation of
26 Israel and the history of the Korean War to the idea of diversity of thought on college campuses
27 contained "inappropriate content."

1 13. That finding is absurd, arbitrary, capricious, and devoid of any rational basis. When
 2 compared with the litany of unrestricted videos posted by other speakers that contain similar or
 3 identical content and differ only in the perspective or identity of the speaker, Google/YouTube's
 4 censorship of PragerU videos smacks of discrimination and animus arising solely from the political
 5 identity and perspective of its speakers, some of whom are identified with and espouse views and
 6 analysis that are considered to be "conservative" on the American political spectrum.

7 14. Not only is Google/YouTube's censorship not based on the content of the PragerU
 8 videos but the "inappropriate" designation falsely and unfairly stigmatizes PragerU. It renders
 9 prospective viewers ineligible to watch PragerU programming from public as well as private
 10 workplace or home computer stations. It prevents access to educational content by students whose
 11 computer use may be subject to parental controls intended to shield the student from truly
 12 inappropriate material, not political or educational discourse of current or historical events. It
 13 precludes PragerU from receiving any revenue from advertisements that would otherwise accompany
 14 content not designated as "inappropriate." And it allows Google/YouTube's virtual monopoly power
 15 over video posting and viewership market to manipulate, bully, and falsely denigrate legitimate
 16 political and educational speakers by subjectively designating their speech as "inappropriate," solely
 17 because Defendants do not like or agree with speakers' political identity or point of view.

18 15. This is free speech discrimination: censorship based not on the content of the speech
 19 but the perceived identity and viewpoint of the speaker. The law categorically prohibits this type of
 20 identity and viewpoint based discrimination and censorship. And the fact that this discrimination
 21 emanates from a company that holds itself out to the public as a committed defender and protector of
 22 free speech makes Google/YouTube's conduct that much more unacceptable and dangerous. In sum,
 23 Google/YouTube's use of their unfettered power over the worldwide web to censor the thoughts and
 24 speech of speakers based solely on their political identity or viewpoint is legally indefensible and
 25 violates the California and United States Constitutions, unfair business practice laws, and their
 26 policies and terms of use.

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PARTIES

16. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 15.

17. Plaintiff PragerU is an educational 501(c)(3) nonprofit company with its principal place of business in the Los Angeles County, California.

18. Defendant Google Inc. is a for profit, public corporation incorporated under the laws of the State of Delaware, with its principal place of business in Mountain View, California and regularly conducts business throughout California, including Santa Clara County. PragerU is informed and believes, that at all relevant times, Defendant Google Inc. acts as an agent of Defendant YouTube, LLC, and controls or participates in controlling and restricting speech on the YouTube service or platform.

19. Defendant YouTube, LLC is a for profit limited liability corporation, wholly owned by Google Inc., and organized under the laws of the State of Delaware. YouTube's principal place of business is Mountain View, California and it regularly conducts business throughout California, including Santa Clara County, California. Defendant YouTube, LLC operates the largest and most popular internet video viewer site, platform, and service in California, the United States, and the world and holds itself out as one of the most important and largest public forums for the expression of ideas and exchange of speech available to the public. PragerU is informed and believes that at all relevant times Defendant YouTube, LLC acts as an agent of Defendant Google Inc. and uses, relies on, and participates with Defendant Google Inc. in restricting speech on the YouTube site, platform, or service.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Does 1 through 25, inclusive, are presently unknown to Plaintiff, and for that reason these defendants are sued by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Doe defendants is in some way legally responsible for the violations of law and injuries and harm caused as alleged herein. If and when appropriate, Plaintiff will seek leave of court to amend this complaint when the true names and capacities of said defendants are known.

1 21. Plaintiff is informed and believes and thereon alleges that at all times herein
2 mentioned, each of the defendants was the agent and representative of the other defendants, acting
3 within the purpose and scope of said agency and representation, and that each of the defendants was
4 and is authorized to ratify and undertake the conduct of each of the other defendants as alleged herein.

JURISDICTION AND VENUE

6 22. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth
7 above in paragraphs 1 through 21.

8 23. This Court has jurisdiction over this matter because Defendants transacted business
9 and committed the acts complained of herein within Santa Clara and Los Angeles Counties, during
10 the times referenced herein, and the contract at issue was largely performed in California, including
11 Santa Clara County.

12 24. This is a civil action arising under the First Amendment of the Constitution of the
13 United States, as subsequently set forth, and this court has jurisdiction of this action by reason of 28
14 U.S.C. §§ 1331, 1338, 1343, and 42 U.S.C. §§ 1983, 1985, and 1988. This Court may award Plaintiff
15 declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 1983, 2201-
16 02, Rule 65 of the Federal Rules of Civil Procedure, and this Court's inherent equitable jurisdiction.
17 The court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1337.

18 25. Venue is proper in this judicial district pursuant to the forum selection clause set forth
19 in the Terms of Use issued by Google/YouTube and 28 U.S.C. § 1391(b) because a substantial part of
20 the events giving rise to the claims raised in this lawsuit occurred in this district, and because all
21 Defendants are located in and operate in Santa Clara and Los Angeles Counties.

FACTS COMMON TO ALL CLAIMS

23 26. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth
24 above in paragraphs 1 through 25.

25 27. Google/YouTube control and regulate the world's largest forum in which the public
26 may post and watch video based content and information for free. Consistent with their express
27 "mission [] to organize the world's information and make it universally accessible and useful,"

1 Google/YouTube provide a forum for members of the public to connect, inform, and inspire others
 2 across the globe and acts as a distribution platform for original content creators, viewers, and
 3 advertisers large and small. YouTube is one of the top three most visited websites globally, (along
 4 with Facebook and Google) and, as of 2017, the site effectively controls and regulates an internet
 5 forum used by over one billion users each month—almost one out of every two people on the
 6 Internet. Eighty-five percent (85%) of the U.S. internet audience watches videos online and more
 7 than 500 million hours of videos are watched on YouTube each day. Indeed more video content has
 8 been uploaded to Google/YouTube by public users than has been created by the major U.S. television
 9 networks in 30 years.

10 28. In so doing, YouTube holds itself out as the largest public forum for video based
 11 speech in California, the United States, and the world. YouTube plays a role of a public forum
 12 where, based on the number of views, likes, and subscriptions, new celebrities emerge and new ideas
 13 are popularized. Indeed, on its own “Official Blog,” YouTube has itself stated that its “mission” is to
 14 “give people a voice” in a “place to express yourself” and in a “community *where everyone’s voice*
 15 *can be heard.*” In totality, YouTube claims to be “one of the largest and most diverse collections of
 16 self-expression in history,” giving “people opportunities to share their voice and talent *no matter*
 17 *where they are from or what their age or point of view.*” See, e.g., <https://youtube.googleblog.com/>
 18 (YouTube Official Blog: Broadcast Yourself).

19 29. Despite their control and regulation of one of the largest forums for public speech and
 20 expression in California, the United States, and the world, Google/YouTube regulate and censor
 21 speech as if the laws governing free speech and commerce do not apply to it. In so doing, Defendants
 22 believe that they have unfettered, unbridled, and unrestricted power to censor speech or discriminate
 23 against public speakers at their whim for any reason, including their animus toward and political
 24 viewpoints of their public users and providers of video content, because Defendants are for profit
 25 organizations rather than governmental entities.

26 30. Google/YouTube are wrong. As the California Supreme Court has stated: “[t]he idea
 27 that private property can constitute a public forum for free speech if it is open to the public in a
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1 manner similar to that of public streets and sidewalks” has long been the law in California. *Fashion*
 2 *Valley Mall, LLC v. N.L.R.B.* (2007) 42 Cal.4th 850, 858. The United States Supreme Court also
 3 recognized more than a half-century ago that the right to free speech guaranteed by the First
 4 Amendment to the United States Constitution can apply even on privately owned property. One of
 5 the most important places to exchange and express views is cyberspace, particularly social media,
 6 where users engage in a wide array of protected First Amendment activity on any number of diverse
 7 topics. And because the “[i]nternet’s forces and directions are so new, so protean, and so far
 8 reaching,” however, the U.S. Supreme Court warned that the law must be conscious that what it says
 9 today about the characteristics of a forum or free speech medium may be obsolete tomorrow. *See*
 10 *Packingham v. North Carolina*, 137 S.Ct. 1730, 1735-38 (2017).

11 31. Where, as in the case of Google/YouTube, a private party operates as one of the
 12 largest internet forums for speech and expression in the history of the world and such forum is
 13 accessible to and freely used by the public in general, there is nothing to distinguish it from any other
 14 forum except the fact that title to the property on which the forum exists belongs to a private
 15 corporation. As the highest court in the nation has made clear, “[t]he more an owner, for his
 16 advantage, opens up his property for use by the public in general, the more do his rights become
 17 circumscribed by the statutory and constitutional rights of those who use it.” *Marsh v. Alabama*
 18 (1946) 326 U.S. 501, 502-03, 66 S. Ct. 276.

19 32. Google/YouTube are no exception. Based on these fundamental principles and
 20 protections of liberty and free speech embedded in our laws, culture, and heritage, as well as the
 21 unlawful practices and conduct alleged herein, PragerU challenges Google/YouTube’s arbitrary and
 22 capricious use of their purported unfettered discretionary and unilateral authority to censor and
 23 regulate PragerU’s speech. PragerU has a fundamental right to speak and express its views to
 24 members of the public who visit or use YouTube in California (and elsewhere). Google/YouTube’s
 25 denial of PragerU’s right and ability to do so, therefore, must be redressed because such a denial
 26 violates the First Amendment of the California and U.S. Constitutions, the California Unruh Act and
 27 unfair competition laws, and the implied covenant of good faith and fair dealing of YouTube’s
 28

1 policies and Terms of Use.

2 **A. Prager University**

3 33. Prager University, also known as PragerU, is a 501(c)(3) educational nonprofit digital
 4 media organization founded in 2011, by radio talk show host Dennis Prager and radio producer and
 5 screenwriter Allen Estrin. PragerU's mission is to present to and educate members of the public
 6 about current and historical issues and events of public interest and concern. In so doing, PragerU
 7 seeks to provide conservative viewpoints and perspectives on public issues that it believes are often
 8 overlooked or ignored due to the dominance of liberal and left wing perspectives in higher education
 9 in the United States. PragerU considers itself a resource for every American, and every person in the
 10 world who values liberty, and promotes educational discourse on topics that help viewers to better
 11 understand and explain the common values from the American conservative perspective.

12 34. The organization is not an academic institution and does not offer certifications or
 13 diplomas. Instead, PragerU depends on charitable donations from the public to, among other
 14 services, promote educational videos. The videos seek to take the best ideas from the best minds and
 15 distill them down to short focused discussions, usually lasting about five minutes. Producers will also
 16 add graphics and animation in an attempt to create the persuasive, entertaining, and educational based
 17 video content that espouses viewpoints and perspectives based on conservative values, including core
 18 values of freedom of speech, a free press, free markets and strong protections of those values. Since
 19 its inception, PragerU has posted more than 250 of these videos on the YouTube channel.

20 **B. Google/YouTube**

21 35. The YouTube channel was founded in 2005 in San Bruno, California and is now the
 22 largest video-sharing website in the world. In 2006, Defendant Google bought YouTube for \$1.65
 23 billion and operates the channel as a Google subsidiary.

24 36. YouTube allows users to upload, view, rate, share, add to favorites, report, comment
 25 on videos, and subscribe to other users. Available content includes video clips, TV show clips, music
 26 videos, short and documentary films, audio recordings, movie trailers, live streams, and other content
 27 such as video blogging, short original videos, and educational videos. Most of the content on
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1 YouTube is uploaded by individuals, but media corporations including CBS, the BBC, Vevo, and
 2 Hulu also offer some of their material via YouTube as part of the YouTube partnership program.
 3 Unregistered users can only watch videos on the site, while registered users are permitted to upload
 4 an unlimited number of videos and add comments to videos.

5 37. Google/YouTube then monetize speakers' intellectual property and viewers' interests
 6 by selling advertisements; some of those advertisements come from the speakers themselves, who
 7 pay for their videos or channels to be "featured" or publicized. In addition, YouTube offers
 8 subscriptions in which people pay ongoing fees to view videos on YouTube without advertisements.
 9 In total, YouTube earned \$9 billion in revenue in 2015, and is estimated to earn \$27 billion annually
 10 by 2020.

11 38. YouTube earns advertising revenue from Google AdSense, a program which targets
 12 ads according to site content and audience. The vast majority of its videos are free to view, but there
 13 are exceptions, including subscription-based premium channels, film rentals, as well as YouTube
 14 Red, a subscription service offering ad-free access to the website and access to exclusive content
 15 made in partnership with existing users. As of February 2017, there are more than 400 hours of
 16 content uploaded to YouTube each minute, and one billion hours of content are watched on YouTube
 17 every day. As of August 2017, the website is ranked as the second-most popular site in the world by
 18 Alexa Internet, a web traffic analysis company, and retains a virtual monopoly power over the
 19 domestic and international internet video posting markets.

20 39. Young people, who are disproportionately affected by the imposition of "restricted
 21 mode" on PragerU videos, are particularly drawn to YouTube. In an average month, eight out of 10
 22 18- to 49-year olds watch YouTube. Television watching time among that demographic dropped,
 23 while it went up on YouTube by 74%. YouTube now reaches more of that demographic than any
 24 broadcast or cable network. Millennials watch two-thirds of all premium online video content via
 25 YouTube, across all devices.

26 40. Defendants' platform is now the world's largest public forum for the expression and
 27 exchange of ideas and speech contained in video based formats. The YouTube internet channel is
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1 used by over one billion users, or almost one third of total internet viewers, to express ideas and
 2 exchange speech through the posting videos by members of the public. YouTube is now one of the
 3 top three most visited websites globally, (along with Facebook and Google). 85% percent of the U.S.
 4 internet audience watches videos online and more than 500 million hours of videos are watched on
 5 YouTube each day. And more video content has been uploaded to Google/YouTube by public users
 6 than that created by the major U.S. television networks in 30 years.

7 **1. YouTube's Restricted Content Mode**

8 41. In 2010, Google/YouTube created and introduced "Restricted Mode." According to
 9 the Defendants, Restricted Mode is an "optional feature to help institutions like schools as well as
 10 people who wanted to better control the content they see on YouTube." It was created to "provide
 11 viewers who wanted to better control the content they see on YouTube with an option to choose an
 12 intentionally limited YouTube experience." Viewers can choose to turn Restricted Mode on for their
 13 personal accounts. It may also be turned on for computers in libraries, schools, and other public
 14 institutions by the institution's system administrator. Viewers who turn on Restricted Mode cannot
 15 see comments on videos. Google/YouTube estimates that about 1.5-2 percent of YouTube's daily
 16 views come from people who have Restricted Mode turned on. Google/YouTube asserts, however,
 17 that Restricted Mode is not "about numbers," but "about the principle of anyone having access to
 18 important content and different points of view."

19 42. Google/YouTube restrict content in Restricted Mode based on certain "Restricted
 20 Mode Guidelines." Accordingly, the Guidelines ensure that videos containing potentially mature
 21 content will not be shown to viewers who have Restricted Mode turned on. Google/YouTube use
 22 five criteria for determining whether such content warrants exclusion from Restricted Mode:
 23 (1) Talking about drug use or abuse, or drinking alcohol in videos; (2) Overly detailed conversations
 24 about or depictions of sex or sexual activity; (3) Graphic descriptions of violence, violent acts, natural
 25 disasters and tragedies, or even violence in the news; (4) Videos that cover specific details about
 26 events related to terrorism, war, crime, and political conflicts that resulted in death or serious injury,
 27 even if no graphic imagery is shown; (5) Inappropriate language, including profanity; and (6) Video

1 content that is gratuitously incendiary, inflammatory, or demeaning towards an individual or
2 group. Google/YouTube concedes, as it must, that there is a risk that some important content could
3 be lost if these rules and criteria are applied without context.

4 43. According to Google/YouTube, Restricted Mode operates to restrict access to videos
5 in two ways. First, Defendants use an automated filtering algorithm that examines certain “signals”
6 like the video’s metadata, title, and the language used in the video. The algorithm looks for certain
7 “signals” to determine if rules or criteria are violated so as to warrant segregation in Restricted Mode.
8 Second, a video can be subject to Restricted Mode filtering if it is “flagged” as “inappropriate” by
9 public viewers, or what Google/YouTube call the “community.” According to Google/YouTube,
10 however, a video is not automatically filtered into Restricted Mode if it is flagged by the community.
11 Instead, flagged videos are reviewed by a “team” for “violations of our Community Guidelines.”

12 44. When it comes to content-based restrictions that result from community flagging,
13 Google/YouTube’s “Community Guidelines” are not a beacon of clarity. Rather, the Guidelines
14 provide what Google/YouTube describe as “some common-sense rules that’ll help you steer clear of
15 trouble.” The rules contain seven criteria: (1) “Nudity or sexual content” that contains pornography
16 or sexually explicit content; (2) “Violent or graphic content” intended to shock, sensationalize, or be
17 disrespectful; (3) “Harmful or dangerous content” that encourages others to do things that might hurt
18 someone, including harmful or dangerous acts; (4) “Hateful Content” that condones violence against
19 individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality,
20 veteran status, or sexual orientation/gender identity, or whose primary purpose is inciting hatred on
21 the basis of these core characteristics; (5) “Copyright” violations where the content was not made by
22 or authorized for use by the user; (6) “Threats” where content includes predatory behavior, stalking,
23 threats, harassment, intimidation, invading privacy, revealing other people’s personal information,
24 and inciting others to commit violent acts or to violate the Terms of Use; and (7) “Spam, misleading
25 metadata, and scams” creating or involving misleading descriptions, tags, titles, or thumbnails in
26 order to increase views. Defendants also discourage the posting of large amounts of untargeted,
27 unwanted or repetitive content.

28

1 45. Google/YouTube also admit that, on some occasions, a video may not violate the
 2 Community Guidelines but may still be subject to restricted mode filtering because Google/YouTube
 3 subjectively deems the content not to be appropriate for everyone. In such cases, Google/YouTube
 4 may place an age restriction when notified of the content. Age-restricted videos are not visible to
 5 users who are logged out, are under 18 years of age, or have Restricted Mode enabled. When
 6 evaluating whether content is appropriate for all ages, Defendants restrict: (1) “Vulgar language”
 7 involving sexually explicit language or excessive profanity in the video or associated metadata; (2)
 8 Violence and disturbing imagery whether real, dramatized or fake violence that may not be suitable
 9 for all ages; (3) Nudity and sexually suggestive content containing nudity or dramatized sexual
 10 conduct may be age-restricted when the context is appropriately educational, documentary, scientific
 11 or artistic and content featuring individuals in minimal or revealing clothing may also be age-
 12 restricted if intended to be sexually provocative, but do not show explicit content.; and (4) Portrayal
 13 of harmful or dangerous activities involving content that intends to incite violence or encourage
 14 dangerous or illegal activities that have an inherent risk of serious physical harm or death. And to
 15 further guide application of this criteria in deciding whether to age restrict a video, Google/YouTube
 16 list some but not all of the factors considered.

17 46. Google/YouTube provide a limited appeal process for any users who believe that the
 18 application of age restriction filtering to the user’s video contents is unwarranted or inappropriate.
 19 According to Google/YouTube, users have the ability to appeal an age-restriction. If a video is age-
 20 restricted, the user technically can appeal the decision to an account Video Manager page by clicking
 21 on the “Appeals Link” next to the age-restricted video. A YouTube “team” will then review the
 22 user’s request and take further action if, in their subjective view, further action is appropriate. But
 23 Google/YouTube restrict a user’s ability to appeal the age restriction on the video only once.

24 **2. Google/YouTube’s Problems With Restricted Mode Filtering**

25 47. The Restricted Mode filtering review process, including the so called “appeals
 26 process” are by no means beacons of clarity. Consequently, Google/YouTube have unfettered
 27 authority to restrict or censor videos based on highly subjective judgments by their reviewers and the
 28

1 programming of their algorithms and electronic review processes. Furthermore, Plaintiff PragerU is
 2 informed and believes that algorithmic and manual review processes are impacted or driven by
 3 Google/YouTube's political perspectives and agenda.

4 48. Consequently, Google/YouTube repeatedly make "mistakes in understanding context
 5 and nuances when it assesses which videos to make available in Restricted Mode." And on May 19,
 6 2017, Google/YouTube admitted that the Restricted Mode "feature isn't working the way it should
 7 and we're going to fix it." For instance, Google/YouTube admit that it got "it wrong" when they
 8 censored videos like Ash Hardell's "Her Vows," Calum McSwiggan's "Coming Out To Grandma,"
 9 Jono and Ben's "Woman interrupted during BBC interview," and Tegan and Sara's "BWU
 10 [OFFICIAL MUSIC VIDEO]."

11 49. Google/YouTube also admitted that they wrongly censored videos posted by members
 12 of the LGBTQ community because of a purported engineering problem that was wrongly filtering
 13 LGBTQ videos. Subsequent to that admission, Defendants went further to accommodate LGBTQ
 14 users by having a team that included YouTube's CEO Susan Wojcicki meet with many of them and
 15 then revising their policies and review protocols and rewriting guidelines that seek to "clarify its
 16 position by specifically allowing personal accounts from victims of discrimination or violent hate
 17 crimes, as long as they don't contain graphic language or content."

18 50. In response to growing criticism of arbitrary and capricious censorship decisions,
 19 Google/YouTube have told the public that they "must and will do a better job" in determining which
 20 videos should be segregated and censored from Restricted Mode. And, because of the subjective
 21 nature of their review criteria, Google/YouTube concede that even though videos don't violate
 22 policies, the video may still be restricted.

23 51. On April 27, 2017, Johanna Wright, VP of Product Management for YouTube, stated
 24 that Google/YouTube wanted to "clarify that Restricted Mode should not filter out content belonging
 25 to individuals or groups based on certain attributes like gender, gender identity, political viewpoints,
 26 race, religion or sexual orientation." Wright further promised users that while "Restricted Mode will
 27 never be perfect, [Google/YouTube] hope to build on [their] progress so far to continue making
 28

1 [their] systems more accurate and the overall Restricted Mode experience better over time.”

2 **3. Google/YouTube’s Censorship Of PragerU’s Videos**

3 52. PragerU is the latest victim of Google/YouTube’s restricted content filtering practices.
4 Unlike other victims, however, the censorship of PragerU videos is not the result of an engineering
5 problem or a loophole in guidelines. Rather, PragerU is the victim of intentional discrimination by
6 Defendants based on Google/YouTube’s animus towards PragerU’s political identity and viewpoint.
7 Furthermore, Google/YouTube seek to justify that animus and bias not by claiming that PragerU has
8 violated YouTube’s restricted content guidelines or criteria, but by arguing that they retain unfettered
9 discretion to censor any video content that they deem “inappropriate,” no matter how subjective,
10 baseless, or arbitrary that decision is. Apparently Google/YouTube believe that they are exempt or
11 somehow immune from the First Amendment’s strict prohibition against content-based restrictions on
12 free speech under California as well as federal law. Google/YouTube are wrong and their policies
13 and conduct towards PragerU violate that law on both a facial and as applied basis when it comes to
14 censoring PragerU.

15 53. On or about August 5, 2016, PragerU, following Google/YouTube’s guidelines and
16 protocol contacted its Google/YouTube account manager to request that 16 of its videos be removed
17 from the age restricted content list and be made available to all viewers, including those who utilize
18 Restricted Mode settings. For over one year, PragerU has worked patiently and cooperatively to try
19 to resolve the censorship issues that comprise this Lawsuit. In response, Google/YouTube have
20 provided vague, misleading, confusing, and often contradictory information that not only has
21 prevented resolution of the issues, but constitutes further evidence and indicia that their restricted
22 mode filtering applied to PragerU is based on Defendants’ intentional discrimination and animus
23 towards users and speakers whose political identity and viewpoints do not comport with those of
24 Google/YouTube.

25 54. On August 5, 2017, Google/YouTube responded by email saying that “Our Product
26 Specialist reviewed this, and at this time the videos are not safe enough for Restricted Mode so they
27 will remain as is and were correctly classified.” In that email correspondence, Google/YouTube
28

1 admitted that they “aim to apply the same standards to everyone and we don’t censor anyone.”
 2 Google/YouTube informed PragerU that they were “more than happy to fix anything for you which
 3 might have been an error from our end.”

4 55. On September 21, 2016, PragerU followed up and requested information about what
 5 “specific actions” it could take to remove what was at the time a total of 21 videos on the restricted
 6 content list.

7 56. On that same day, Google/YouTube responded: “As mentioned in the previous emails,
 8 at this time, your videos aren’t appropriate for the younger audiences and hence they’re not appearing
 9 in the restricted mode search results. I’d recommend you to go through our Community Guidelines
 10 and align them with your content to see where it has violated.”

11 57. Google/YouTube’s response that they would not change the age restriction on all 21
 12 restricted PragerU videos was patently arbitrary, discriminatory, and an obvious pretext to justify
 13 illegally discriminating against PragerU because of its conservative political perspective and identity.
 14 As is obvious from a review of each of those videos (available by hyper link in the Table embedded
 15 at paragraph 72, *infra*), the videos were entirely “aligned” with the Community Guidelines and did
 16 not contain any content that could reasonably be construed as not appropriate for younger audiences.

17 58. Nonetheless, on October 19, 2016, PragerU in good faith followed up with
 18 Google/YouTube to advise Google/YouTube of the obvious: “after months of trying to get our videos
 19 removed from Restricted Mode (or at least get a clear explanation of what we can change to remove
 20 them), PragerU decided that its only recourse was to make this issue public.” PragerU went on “to
 21 once again ask that YouTube unrestrict the now 16 videos currently in Restricted Mode.”
 22 Furthermore, in compliance with the Google/YouTube appeals process, PragerU also requested “an
 23 explanation for why” certain videos were now “unrestricted,” including: “Why Are There Still
 24 Palestinian Refugees?”, “Are 1 in 5 Women Raped at College?”, “Is America Racist?”, “Don’t Judge
 25 Blacks Differently,” and “Commandment 6: Do Not Murder.”

26 59. On November 4, 2016, Google/YouTube responded: “The team is still investigating
 27 the issue and it’s taking longer than usual. I have requested the team to expedite the process and
 28

1 resolve as soon as possible.”

2 60. Then, on November 10, 2016, Google/YouTube responded only that “[a]t this time the
3 videos have been algorithmically included in Restricted Mode and no manual action was needed.”

4 61. On December 5, 2016, PragerU sent a new request to appeal a removed video by a
5 pro-Israeli Muslim activist entitled “Born to Hate Jews,” that discussed how best to resist hatred and
6 anti-Semitism. Incredibly, Google/YouTube restricted the video as “hate speech.” Indeed, the video
7 was anything but. In fact, it contained a thoughtful and important discussion of the origins and
8 remedies for combatting hate speech by a Muslim man who supported the right of Israel to exist.
9 Consequently, PragerU requested that the content restrictions be removed and that the failure to do so
10 “is de facto censorship” that “will prevent hundreds of thousands, or millions of people from hearing
11 its valuable message.”

12 62. Over the next year, multiple communications occurred between PragerU and
13 Google/YouTube about the restriction of PragerU videos. During that period, PragerU was seeing
14 more and more evidence that its videos were being restricted not for content, but for the political
15 viewpoint or identity of the speaker.

16 63. In communications beginning on or about July 31, 2017, Google/YouTube conceded
17 that they could not tell whether the PragerU videos had been restricted after a manual review or were
18 censored only by the automated algorithm. Among other things, at Google/YouTube’s request,
19 PragerU provided Defendants with a list of PragerU videos that had been restricted and a comparative
20 list of videos that discussed the same topics but from liberal or left wing perspectives that were not
21 restricted. Google/YouTube sent the comparative list of videos to a team for manual review.

22 64. On August 23, 2017, Max Pappas, a public policy staffer for Google/YouTube,
23 notified PragerU that YouTube was rolling out some changes to its restricted mode filtering process
24 but noted that the planned changes “should have no impact on your channel, and I double checked on
25 that, but if they inadvertently do, let me know so I can help with any appeal.” In response, PragerU
26 informed Google/YouTube that the “policies” were still impacting its content and the number of
27 restricted videos had actually increased to 34.

28

1 65. Google/YouTube then wanted to know if, in addition to restricting content, PragerU
 2 videos were also being “demonitized” [sic] and prevented from running ads. PragerU responded
 3 with a list of over 50 videos that had either or both been restricted as to content and demonetized:

4 **Currently restricted (As of October 20, 2017):**

5 PragerU Live: Alan Dershowitz

6 Ami Horowitz Do White Americans Have White Privilege?

7 What’s Wrong with E-Cigarettes?

8 Why Isn’t Communism as Hated as Nazism?

9 Where Are the Moderate Muslims?

10 Ami Horowitz How Is Muslim Immigration to Sweden Working Out?

11 The Least Diverse Place in America

12 Ami Horowitz What’s Wrong with Socialism?

13 Dennis Prager Talks Politics With Gloria Alvarez and Felipe Moura Brasil

14 Why America Must Lead

15 What’s Holding the Arab World Back?

16 What Should We Do About Guns?

17 Immigrants! Don’t Vote for What You Fled

18 Is Islam a Religion of Peace?

19 Are the Police Racist?

20 Why Don’t Feminists Fight for Muslim Women?

21 Why Did America Fight the Korean War?

22 Who’s More Pro Choice: Europe or America?

23 What ISIS Wants

24 Are 1 in 5 Women Raped at College?

25 Islamic Terror: What Muslim Americans Can Do

26 Did Bush Lie About Iraq?

27 Who NOT to Vote For

1 Israel: The World's Most Moral Army
2 Radical Islam: The Most Dangerous Ideology
3 The Most Important Question About Abortion
4 Why Do People Become Islamic Extremists?
5 He Wants You
6 Israel's Legal Founding
7 Pakistan: Can Sharia and Freedom Coexist?
8 The World's Most Persecuted Minority: Christians
9 Why America's Military Must Be Strong
10 Born to Hate Jews
11 PragerU Live: David French
12 Ten Commandments: 6. Do Not Murder
13 Israel: The World's Most Moral Army
14 Why America Invade Iraq
15 Gender Identity: Why All the Confusion?
16 Gun Rights Are Women's Rights

17 **Demonetized (As of October 2017):**

18 PragerU: Short Videos. Big Ideas — posted by Noah? 082517
19 Fireside Chat with Dennis Prager (8/4/17)
20 Fireside Chat with Dennis Prager! (7/20/17)
21 Is the Death Penalty Ever Moral?
22 Fireside Chat With Dennis Prager! (6/20/17)
23 Fireside Chat With Dennis Prager! (7/13/17)
24 PragerU Live: Sidney Powell (6/22/17)
25 PragerU Live: David French (6/20/17)
26 Interview with Nigerian Senator Ben MurrayBruce
27 Interview with Jason Kenney (5/26/17)

1 Islam and Terrorism (5/23/17)
2 Why Isn't Communism as Hated as Nazism?
3 PragerU: PragerU Live: Dana Perino (4/6)
4 Fireside Chat With Dennis Prager & Special Guest Ben Shapiro! (3/16/17)
5 PragerU Live with Dr. Jordan Peterson (3/16/17)
6 Fireside Chat with Dennis Prager (3/9/17)
7 PragerU Live: We're interviewing "Day Without a Woman" protesters! (3/8/17)
8 PragerU Live: It's Day Without a Woman! (3/8/17)
9 Fireside Chat with Dennis Prager! (Jan. 26, 2017)
10 PragerU Live: Bret Stephens (2/3/17)
11 PragerU Live: Tom Shillue (2/14/17)
12 PragerU Live: Christina Hoff Sommers (3/6/17)
13 PragerU Live: Dave Rubin (10/21/16)
14 PragerU Live: Felipe Moura Brasil (2/20/17)
15 PragerU Live: Raymond Ibrahim (2/17/17)
16 PragerU Live: Dennis Prager and Adam Carolla!
17 What's Holding the Arab World Back?
18 Joe Everson's Artistic National Anthem
19 Is Islam a Religion of Peace?
20 Are The Police Racist?
21 Why Don't Feminists Fight for Muslim Women?
22 Who's More ProChoice:
23 Europe or America?
24 What ISIS Wants
25 Radical Islam: The Most Dangerous Ideology
26 The Most Important Question About Abortion
27 Why Do People Become Islamic Extremists?
28

1 Should America be the World's Policeman?

2 Don't Judge Blacks Differently

3 Israel's Legal Founding

4 Pakistan: Can Sharia and Freedom Coexist?

5 Ten Commandments: 6. Do Not Murder

6 Aznar on Europe, America and Israel

7 66. On October 12, 2017, Google/YouTube admitted that the manual reviews they
 8 conducted on some of these videos were in fact "human reviews," leaving little doubt that the
 9 restrictions and demonetization of PragerU videos were not merely the result of an automated
 10 algorithm error. But Google/YouTube declined to provide any explanation for why the videos were
 11 restricted or demonetized because they purportedly "can't share more details about our review
 12 process, as doing so could benefit channels that do not play by the rules (those who game the
 13 system)."

14 67. This practice of arbitrary and capricious censorship and restriction of speech continues
 15 to this day against PragerU. Indeed, in October, 2017, Google/YouTube discontinued PragerU's ad
 16 grants account for over six days. When PragerU requested that Google/YouTube reconsider,
 17 Google/YouTube responded: "No chance." Then, with an inconsistent and changed explanation,
 18 Defendants reinstated PragerU's ad grants account but continued to restrict, demonetize, and/or
 19 change restricted mode classifications of PragerU videos at their whim.

20 68. Even when Google/YouTube attempt to provide an explanation for why they are
 21 restricting PragerU content, the explanations are vague and illogical pretexts that further confirm the
 22 arbitrary and capricious nature of the censorship. By way of example only, Google/YouTube
 23 informed PragerU that the videos "Why Isn't Communism as Hated as Nazism?" and "What's
 24 Holding the Arab World Back?" were placed in Restricted Mode because they purportedly discussed
 25 "hate and genocide" and "terrorism and genocide," respectively. No further explanation as to what
 26 language constituted an inappropriate discussion of "hate and genocide" or "terrorism and genocide"
 27 was given. But to the extent that Google/YouTube's policy is to restrict all videos that mention the
 28

1 words “hate,” “terrorism,” or “genocide,” or any video that mentions those topics, then
 2 Google/YouTube need to explain why thousands of videos that use or mention those terms are not
 3 also restricted.

4 69. Furthermore, a review of those two videos (available by hyperlink in the Comparative
 5 Table embedded at paragraph 72, *infra*) shows that Google/YouTube’s explanation for restricting
 6 them is either false and misleading or is based on its discriminatory animus towards PragerU. Again,
 7 each of those videos discusses topics in the same manner and using the same language and
 8 educational format as other videos that are not restricted. Indeed, the only discernible difference
 9 between the language and the format of the censored videos and non-censored videos is the political
 10 viewpoint of the speaker: the former provides a conservative political perspective on the issues while
 11 the latter uses those terms to provide a liberal bent.

12 70. Finally, PragerU is informed and believes that content from its restricted videos has
 13 been copied and used by other speakers to post videos that are not restricted by Google/YouTube.
 14 Specifically, PragerU is informed and believes that content from the following videos that it has
 15 produced and uploaded to YouTube and that Google/YouTube has subsequently restricted, was not
 16 restricted after it was copied and posted by other content providers or vloggers:

17 Why Don't Feminists Fight For Muslim Women?
https://www.youtube.com/watch?v=c_qV7ya03sU

18 The Least Diverse Place in America
<https://www.youtube.com/watch?v=mO-CrOvepU0>

20 Why America Must Lead
https://www.youtube.com/watch?v=IreFjN_J-10

22 What's Holding the Arab World Back?
<https://www.youtube.com/watch?v=04UExojtPNo>

24 6th Commandment: Do Not Murder
<https://www.youtube.com/watch?v=rbTvXX3Csq8>

25 The World's Most Persecuted Minority: Christians
<https://www.youtube.com/watch?v=GHBu2aevyak>

26 Is Islam a Religion of Peace?
<https://www.youtube.com/watch?v=B-8f-FjLwRs>

1 Immigrants! Don't Vote for What You Fled
 1 <https://www.youtube.com/watch?v=szwhSdd3Dno>

2 Who NOT to Vote For
 2 <https://www.youtube.com/watch?v=Lnub5IDKUHc>

3 Are 1 in 5 Women Raped at College?
 4 <https://www.youtube.com/watch?v=-HEe6JFRJn0>

5 71. Consequently, identical content exists on YouTube in both restricted and unrestricted
 6 videos, the only difference being that the restricted video was posted by PragerU whereas the copycat
 7 video was posted by other speakers or posters of video content with differing political identities and
 8 viewpoints.

9 72. Unable to get a clear and consistent explanation of why certain videos were classified,
 10 PragerU undertook an extensive comparative analysis of its videos that were restricted and those on
 11 similar topics by different speakers that were not². As of the date of filing of this lawsuit, the analysis
 12 shows, there is no rational or reasonable basis to make the distinction:

Video:	Link:	Channel:
PragerU Video Restricted: Are 1 in 5 women in college raped?	https://www.youtube.com/watch?v=K0mzqL50I-w&t=225s	PragerU
Similar YouTube videos not restricted:		
Real Time with Bill Maher: The Hunting Ground (HBO)	https://www.youtube.com/watch?v=JINxoR-S5To	Real Time With Bill Maher
Your vagina is not a car: Clementine Ford at TEDxSouthBankWomen	https://www.youtube.com/watch?v=ATISgVUKetI	TEDx Talks
Full Interview: Joe Biden on How to End the Rape Crisis Plaguing College Campuses	https://www.youtube.com/watch?v=Vkh_cY3-aTw	Mic
Author Jon Krakauer on new book "Missoula" and college rape epidemic	https://www.youtube.com/watch?v=nGI9K20QCgs	CBS This Morning
A Life Of Rape Culture Brynne Thomas TEDxYouth@TCS	https://www.youtube.com/watch?v=oYppe9kyUxY	TEDx Talks
Lady Gaga sings about campus rape	https://www.youtube.com/watch?v=ogoq6ddJsMU	ABS-CBN News
PragerU Video Restricted: Why did America Fight the Korean War?	https://www.youtube.com/watch?v=t44SbOyjEUM	PragerU
Similar YouTube videos not restricted:		
Why Korea Split Into North and South Korea	https://www.youtube.com/watch?v=l0E9Kel8BtE	Wonder Why
Cold War in 9 Minutes	https://www.youtube.com/watch?v=wVqziNV7dGY	John D Ruddy

26 2 This chart was accurate as of October 23, 2017, however, due to the inconsistent application of
 27 Restricted Mode status, some of these videos may have become either restricted or non-restricted at
 the time of review.

	Video:	Link:	Channel:
1	Korean War overview The 20th century World history Khan Academy	https://www.youtube.com/watch?v=MEGyRgYJKEY	Khan Academy
2	The Korean War: Every Day	https://www.youtube.com/watch?v=fBeiD6kGugE	EmperorTigerstar
3	The Korean "War" Explained: US History Review	https://www.youtube.com/watch?v=okQzZhL81tE	Keith Hughes
4	PragerU Video: Why don't feminists fight for muslim women?	https://www.youtube.com/watch?v=wJkFQohIKNI	PragerU
5	Similar YouTube videos not restricted:		
6	Are Islam and Feminism Mutually Exclusive Get Real Refinery29	https://www.youtube.com/watch?v=0Vduu3_c5xo	Refinery29
7	What Islam really says about women Alaa Murabit	https://www.youtube.com/watch?v=FETryXMpDI8	TED
8	ADVICE TO MUSLIM WOMEN (About Dajjal) - Tim Humble Animated	https://www.youtube.com/watch?v=KnBD7pTAqj8	Practical Islam
9	What Does It Mean To Be A Feminist In Islam?	https://www.youtube.com/watch?v=MpdXrKqWx14	NowThis World
10	What The West Gets Wrong About Muslim Women	https://www.youtube.com/watch?v=IzKyzS8Y6IY	NowThis World
11	PragerU Video: Are the police racist?	https://www.youtube.com/watch?v=UQCQFH5wOJo	PragerU
12	Similar YouTube videos not restricted:		
13	How to Deal with the Police Parents Explain	https://www.youtube.com/watch?v=coryt8IZ-DE	WatchCut Video
14	Keith Lamont Scott's Brother-in-Law: The Role of Racism in Police Shootings	https://www.youtube.com/watch?v=M0sgKs7PUU8	OWN
15	Real Time with Bill Maher: A System of Racism (HBO)	https://www.youtube.com/watch?v=QNIkrsnZ5N0	Real Time with Bill Maher
16	FIRST PRESSER! Seahawks Michael Bennett speaks on racism and police brutality allegations	https://www.youtube.com/watch?v=HI6I1U-MsTw	ABC15 Arizona
17	Meeting addresses racism in police and fire departments	https://www.youtube.com/watch?v=AxPKW74EtAY	TheDay
18	Looking Back At Ferguson And Jon Stewart: Real Talk With AJ+	https://www.youtube.com/watch?v=XSx2TuuoDB0	AJ+ (Al Jazeera)
19	PragerU Video: Who NOT to Vote For	https://www.youtube.com/watch?v=eE6ica0t95Q	PragerU
20	Similar YouTube videos not restricted:		
21	Vote For Jeremy Corbyn?	https://www.youtube.com/watch?v=wFs-HFSO3A8	Lex Croucher
22	PragerU Video: Do not murder	https://www.youtube.com/watch?v=0RENPaY043o	PragerU
23	Similar YouTube videos not restricted:		
24	Justice: What's The Right Thing To Do? Episode 01 "THE MORAL SIDE OF MURDER"	https://www.youtube.com/watch?v=kBdfcR-8hEY	Harvard University
25	6th Commandment: Do Not Murder (IDENTICAL VIDEO TO OURS UNRESTRICTED)	https://www.youtube.com/watch?v=rbTvXX3Csq8	Jack Kern
26	PragerU Video: Did Bush Lie About Iraq?	https://www.youtube.com/watch?v=LgQw8EhPJWw	PragerU
27			
28			

	Video:	Link:	Channel:
1	PragerU Video: Why America Invaded Iraq	https://www.youtube.com/watch?v=T2tbpUqNwRU	PragerU
2	Similar YouTube videos not restricted:		
3	Stephen Gets A Straight Answer Out Of Donald Rumsfeld	https://www.youtube.com/watch?v=4Z3z7DvoA-M	The Late Show with Steven Colbert
4	Jon Snow interviews Alastair Campbell over Iraq WMD report being sexed up (2003)	https://www.youtube.com/watch?v=GBWE7QzADE8	Channel 4 news
5	Iraqi governing council president says Saddam was pursuing WMD	https://www.youtube.com/watch?v=XzEeoytICKs	AP Archive
6			
7	PragerU Video: What should we do about guns?	https://www.youtube.com/watch?v=wAXxQBlfH7I	PragerU
8	Similar YouTube videos not restricted:		
9	Natalie Morales on gun control Larry King Now Ora.TV	https://www.youtube.com/watch?v=S0lZk2XGvPQ	Larry King
10	New York Passes 'Strictest' Gun Control Law	https://www.youtube.com/watch?v=PmxXikPUYIQ	David Pakman Show
11	Is It The 'Right' Time To Talk About Gun Control? The View	https://www.youtube.com/watch?v=FDbAHx0wBM4	The View
12	'We just gotta get guns out of people's hands' – Nevada state senator	https://www.youtube.com/watch?v=vEuwUnxQlRc	RT Nation
13	Who Should be Denied a Gun Permit?	https://www.youtube.com/watch?v=I0q3Jccj5Hg	Bloomberg
14			
15	PragerU Video: He wants you	https://www.youtube.com/watch?v=dIZsGpWJmos	PragerU
16	Similar YouTube videos not restricted:		
17	Why Men Look At Other Women	https://www.youtube.com/watch?v=oFFmMyxfC38	2Minutes2Know
18	Monogamy	https://www.youtube.com/watch?v=uH_rIT0juIM	SciShow
19	What could be wrong with monogamy? Marc de Hond at TEDxEde	https://www.youtube.com/watch?v=9aKPy1SvYPs	TEDx Talks
20	Is He Looking at Other Women? - by Claire Casey (for Digital Romance TV)	https://www.youtube.com/watch?v=aaXMLMk48PE	DigitalRomanceInc
21	The Blog - Reasons Men Check Out Other Women And How To Handle It (Pt.2) Cool TV	https://www.youtube.com/watch?v=r5DjiWLfVpE	Wazobia Wax
22			
23	PragerU Video: Why Isn't Communism as Hated as Nazism?	https://www.youtube.com/watch?v=nUGkKKAOgDs	PragerU
24	Similar YouTube videos not restricted:		
25	Genocide: Worse Than War Full-length documentary PBS	https://www.youtube.com/watch?v=w7cZuhqSzzc	PBS
26	Communism vs. Socialism: What's The Difference?	https://www.youtube.com/watch?v=FrtDZ-LOXFw	NowThis World
27	What Is Communism?	https://www.youtube.com/watch?v=qElx_EyTTKA	NowThis World
28	Communists, Nationalists, and China's Revolutions: Crash Course World History #37	https://www.youtube.com/watch?v=UUCEeC4f6ts	Crash Course
29			
30	PragerU Video: Immigrants! Don't vote for what you fled	https://www.youtube.com/watch?v=10uX2EhsflA	PragerU
31	Similar YouTube videos not restricted:		
32	Immigrants On Voting As New Americans	https://www.youtube.com/watch?v=Qtfehx0V5uI	BuzzFeedVideo

	Video:	Link:	Channel:
1	TEENS REACT TO DACA (ILLEGAL IMMIGRATION POLICY)	https://www.youtube.com/watch?v=QyexzwiFE3Uw	FBE
2	The Economics of Immigration: Crash Course Econ #33	https://www.youtube.com/watch?v=4XQXiCLzyAw	Crash Course
3	Why a Wall Won't Stop Immigration	https://www.youtube.com/watch?v=K_P9PR5ckFk	College Humor
4	Why Walls Won't Secure The U.S.–Mexico Border AJ+	https://www.youtube.com/watch?v=Yh3fez9CyXg	AJ+
5			
6	PragerU Video: Born to Hate Jews	https://www.youtube.com/watch?v=xCQEneGfFmY	PragerU
7	Similar YouTube videos not restricted:		
8	Red news, blue news: Islamophobia	https://www.youtube.com/watch?v=rZKqxxoUoYs	CNN
9	Why Do People Hate Muslims? Ustadh Nouman Ali Khan	https://www.youtube.com/watch?v=leJn8IT-fD8	DailyIslamicReminder
10	Dangers of Islamophobia Marc Scarcelli TEDxCPP	https://www.youtube.com/watch?v=ZASGOWgTYrk	TEDx Talks
11	Islamophobia and Islamophilia: An Unusual Connection Nazia Kazi TEDxStocktonUniversity	https://www.youtube.com/watch?v=nh-PdWBjkh4	TEDx Talks
12	Islamophobia: Melissa Boigon at TEDxGallatin 2013	https://www.youtube.com/watch?v=t8htxQmVybM	TEDx Talks
13			
14	PragerU Video: Why america must lead	https://www.youtube.com/watch?v=MSvWH-Y8eeY	PragerU
15	PragerU Video: Why America's Military Must Be Strong	https://www.youtube.com/watch?v=W5o_KdvC1c8	PragerU
16	Similar YouTube videos not restricted:		
17	How can the EU lead the world in human rights?	https://www.youtube.com/watch?v=moZbFNZItO8	The Graduate Institute Geneva
18	America Is Once Again Ready to Lead': Trump Lays Out Bold, Inspirational Vision	https://www.youtube.com/watch?v=Tg5YInftvEw	CBN News
19	Does India Need Strong Military? - Dr. Kiran Bedi with Sadhguru	https://www.youtube.com/watch?v=Yy_UOLD2bBE	Sadhguru
20	John McCain: America must lead	https://www.youtube.com/watch?v=s6jSpEr-yNw	Financial Times
21	Obama at West Point: America Must Lead the World	https://www.youtube.com/watch?v=ON0O-kP2ssE	Bloomberg
22			
23	PragerU Video: Where are the moderate muslims	https://www.youtube.com/watch?v=Y9Enx4XxO1E	PragerU
24	PragerU Video: Is islam a religion of peace?	https://www.youtube.com/watch?v=5AkAGc5nOXw	PragerU
25	PragerU Video: Islamic Terror: What Muslim Americans Can Do	https://www.youtube.com/watch?v=WXXlhKELxEo	PragerU
26	PragerU Video: Pakistan: Can Sharia and Freedom Coexist?	https://www.youtube.com/watch?v=nPG4H3XUX1Q	PragerU
27	PragerU Video: Radical Islam. The worlds most dangerous ideology	https://www.youtube.com/watch?v=-LGzrYUGXdI	PragerU
28	PragerU Video: Why do people become islamic extremists?	https://www.youtube.com/watch?v=-IchGuL501U	PragerU
	Similar YouTube videos not restricted:		

	Video:	Link:	Channel:
1	Islam, the Quran, and the Five Pillars All Without a Flamewar: Crash Course World History #13	https://www.youtube.com/watch?v=TpcbfxtdoI8	Crash Course
2	Islam and Politics: Crash Course World History 216	https://www.youtube.com/watch?v=ka8csjsmX6I	Crash Course
3	Mansa Musa and Islam in Africa: Crash Course World History #16	https://www.youtube.com/watch?v=jvnU0v6hcUo	Crash Course
4	How Islam Began - In Ten Minutes	https://www.youtube.com/watch?v=PDxKxnVZtgo	TrueTube
5	Chris Hayes: If This Isn't Terrorism, What Is? All In MSNBC	https://www.youtube.com/watch?v=-Ux6MXQQLpA	MSNBC
6	The Untold History - How Islam Spread	https://www.youtube.com/watch?v=a8CbEzcOX3M	MercifulServent
7	What is Sharia Law and its Principles? Dr. Jasser Auda	https://www.youtube.com/watch?v=odmySqc9Qa8	Quran Speaks
8	Similar YouTube videos not restricted:		
9	PragerU Video: Israel. The World's Most Moral Army	https://www.youtube.com/watch?v=tN1MkAGuVyY	PragerU
10	PragerU Video: Israel's legal founding	https://www.youtube.com/watch?v=12KJa4a0d64	PragerU
11	Who Recognizes The State Of Palestine?	https://www.youtube.com/watch?v=Idad9kZ5Ccw	AJ+ (Al Jazeera)
12	Why Ireland split into the Republic of Ireland & Northern Ireland	https://www.youtube.com/watch?v=dCJMqgfHXNI	WonderWhy
13	Why Korea Split Into North and South Korea	https://www.youtube.com/watch?v=l0E9Kel8BtE	WonderWhy
14	Geography Now! ISRAEL	https://www.youtube.com/watch?v=AWKmazrRIwA	Geography Now
15	Why Isn't Palestine A State Yet?	https://www.youtube.com/watch?v=Dyqx7CDGrTA	NowThis World
16	PragerU Video: The least Diverse Place in America	https://www.youtube.com/watch?v=y0HKgs_0zDY	PragerU
17	Similar YouTube videos not restricted:		
18	Diversity Of Thought Vidya Spandana TEDxPortland	https://www.youtube.com/watch?v=-4mjDiGL-V0	TEDx Talks
19	Why is Hollywood so White? Colin Stokes TEDxBeaconStreet	https://www.youtube.com/watch?v=OyM-2_5cmkA	TEDx Talks
20	The Oscars' horrible lack of diversity, explained in 2 minutes	https://www.youtube.com/watch?v=oict87KOnY4	Vox
21	PragerU Video: The most important question on abortion	https://www.youtube.com/watch?v=AMwkQVpy98A	PragerU
22	PragerU Video: Who is more pro-choice? Europe or America?	https://www.youtube.com/watch?v=IHrihwWJv8o	PragerU
23	Similar YouTube videos not restricted:		
24	1st Trimester Medical Abortion: Abortion Pills	https://www.youtube.com/watch?v=lRDnVSMr5j0	Live Action
25	Aspen Baker: A better way to talk about abortion	https://www.youtube.com/watch?v=P5Mpo4JQZhw	TED
26	Stacey and Coleen Share Their Abortion Experiences Loose Women	https://www.youtube.com/watch?v=cMtCYVJ6trI	Loose Women
27	Abortion and Sex Malayalam Dr. Jose Joseph & Renjini Menon	https://www.youtube.com/watch?v=gw713r8tFiA	Sex and Health

	Video:	Link:	Channel:
1	PragerU Video: The worlds most persecuted minority. Christians.	https://www.youtube.com/watch?v=ytdMUddGe-U	PragerU
2			
3	Similar YouTube videos not restricted:		
4	Myanmar Muslims fear fate of persecuted Rohingya	https://www.youtube.com/watch?v=IOTy_A5fskI	Al Jazeera English
5	Obama: Christianity Causes A Lot Of Violence Too NowThis	https://www.youtube.com/watch?v=raqGgcsuDAw	NowThis News
6	Early Christian Persecution	https://www.youtube.com/watch?v=hJR0A9phBc8	Ryan Reeves
7			
8	PragerU Video: What is holding the arab world back	https://www.youtube.com/watch?v=aAOzlinU94g	PragerU
9	PragerU Video: What ISIS Wants	https://www.youtube.com/watch?v=v7f0bKIOwys	PragerU
10	Similar YouTube videos not restricted:		
11	Not in my Name - Muslims against ISIS	https://www.youtube.com/watch?v=hAxIOC8Zisc	Conflict Studies
12	Islam and Politics: Crash Course World History 216	https://www.youtube.com/watch?v=ka8csjsmX6I	CrashCourse
13	Bishop Barron on ISIS and the Cross	https://www.youtube.com/watch?v=zHQP8INrV7M	Bishop Robert Barron
14	Who Is The Muslim Brotherhood?	https://www.youtube.com/watch?v=INm6DufrgEk	AJ+
15			
16	Violent Buddhists Target Muslims in Myanmar: The Daily Show	https://www.youtube.com/watch?v=J2Qq-RPYb_I	The Daily Show with Trevor Noah
17			
18	PragerU Video: What is wrong with ecigarettes	https://www.youtube.com/watch?v=XW4duMgxEIo&t=28s	PragerU
19	Similar YouTube videos not restricted:		
20	Smoking vs. Vaping	https://www.youtube.com/watch?v=haqi4xvjvKo	AsapSCIENCE
21	E-cigarettes linked to incurable 'Popcorn Lung' disease	https://www.youtube.com/watch?v=45j-kR_-jMo	WKBW TV Buffalo, NY
22	Banning E Cigarettes Loose Women	https://www.youtube.com/watch?v=CTGLSG85WQQ	Loose Women
23			
24	Electronic cigarettes and health - the basics	https://www.youtube.com/watch?v=mToznqKD5Ac	Risk Bites
25	Is Marijuana Smoke Healthier Than Tobacco Smoke?	https://www.youtube.com/watch?v=fNBTD7awlno	Seeker
26			
27	PragerU Video: Gender Identity: Why All the Confusion?	https://www.youtube.com/watch?v=yAAIfva89aw	PragerU
28	Similar YouTube videos not restricted:		
29	Celebrating the LGBT Community In Sports With GAME FACE FANDEMONIUM Quickie	https://www.youtube.com/watch?v=kUzTh7nIRLE	HitFix
30	That Moment You Realize You're Transgender	https://www.youtube.com/watch?v=P-hj5gZzwow	SoulPancake
31	Transgender dad and daughter transition together from mother and son	https://www.youtube.com/watch?v=lTTXE3K_0AY	ABC News
32	Jazz and Her Grandpa Argue About Being Transgender I Am Jazz	https://www.youtube.com/watch?v=NgG8vwRVktk	tlc uk
33			
34	Jazz Debates With Tomi Lahren! I Am Jazz	https://www.youtube.com/watch?v=lxZG0oDQRbQ	tlc uk
35	Bottom Surgery I Am Jazz	https://www.youtube.com/watch?v=lG-U8oFpa8o	tlc uk

Video:	Link:	Channel:
Transgender Teen Shares Powerful Message	https://www.youtube.com/watch?v=E0vidyvjco	ABC News
Gun Rights Are Women's Rights	https://www.youtube.com/watch?v=2iKBEJp92CA&t=1s	PragerU
Similar YouTube videos not restricted:		
Women's Self-defense That Actually Works! (Gracie Jiu-Jitsu)	https://www.youtube.com/watch?v=pndPbpHLposw	Graciebreakdown
Simple Self Defense Moves You Should Know	https://www.youtube.com/watch?v=M4_8PoRQP8w	Buzzfeedvideo
Top 7 Self Defense Moves that Women Need to Know	https://www.youtube.com/watch?v=j_YOvLi06-0	Poway Personal Trainer
Self Defense Tips & Techniques for Women : Palm Heel Strike to Vital Areas in Women's Self Defense	https://www.youtube.com/watch?v=e8PMAA2NxFAQ	expertvillage
☆Pepper Spray, Personal Safety, Self Defense Tips for Women☆	https://www.youtube.com/watch?v=ION8QGej9To	Dr. Tracy Timberlake

73. As the Table demonstrates, there is no rational or reasonably objective basis for treating PragerU video content differently from other speakers. The only difference is that PragerU features speakers and scholars who bring a conservative viewpoint to the issues discussed while the non-restricted videos discuss the same topics from a liberal or left wing perspective. That is discrimination, a violation of the right to free speech, and an unfair business practice for which the law and equity can and will remedy.

FIRST CAUSE OF ACTION

(California Constitution Article I, section 2)

74. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each of the allegations set forth in paragraphs through 1 through 73 above.

75. Article I, section 2 of the California Constitution protects the liberty of speech and association, especially in public, quasi-public, and limited public spaces.

76. In YouTube, Defendants created and maintain a public forum or its functional equivalent for the public to express and exchange views and ideas, or in the alternative at least a quasi- or limited public forum. Defendants further act as state actors because Defendants and the YouTube site perform an exclusively and traditionally public function by regulating free speech within a public forum. Accordingly, speech cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on the basis of viewpoint or the identity of the speaker.

1 77. Plaintiff's videos, which are designed to educate the public, adults and minors alike,
 2 on historical events, philosophy, economics, and current events, constitute expressive speech and
 3 activity protected by Article I, section 2 of the California constitution.

4 78. Defendants have restricted Plaintiff's speech and expressive conduct based on
 5 subjective, vague, and overbroad criteria that give Defendants unfettered and unbridled discretion to
 6 censor speech for any or no reason, no matter how arbitrary or capricious. Those criteria further fail
 7 to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited or
 8 restricted. Defendants' adoption and application of those criteria on its face violates PragerU's right
 9 to free speech as guaranteed by Article I, section 2 of the California Constitution. Further, that
 10 invidious potential has been borne out and evidenced by Defendants' application of those policies and
 11 procedures to censor PragerU. PragerU has repeatedly asked what it could do differently, or how it
 12 could change its videos so that they could be unrestricted or re-monetized, but Google/YouTube have
 13 never meaningfully answered those questions.

14 79. Defendants also apply their censorship criteria, including the Terms of Use and
 15 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content
 16 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted
 17 content posted by PragerU to the YouTube platform but not restricted similar or identical video
 18 content, including identical video content initially produced by PragerU but subsequently copied and
 19 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria
 20 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on
 21 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual
 22 content of the speech.

23 80. Further, because Plaintiff is so restrained and punished because of the speakers
 24 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate
 25 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to
 26 free association and assembly by blocking viewers' access to videos and comments.

27 81. No compelling, significant, or legitimate reason justifies Defendants' actions. Even if
 28

1 such interests did exist to justify Google/YouTube's restriction and demonetization rules generally,
 2 the restrictions imposed on Plaintiff's speech are not narrowly or reasonably tailored to further such
 3 interests, because they sweep within their ambit inoffensive and non-graphic discussions intended and
 4 designed for educational purposes. Given Google/YouTube's monopolistic control over search
 5 results, including video search results as well as online video streaming, Plaintiff has no alternative
 6 affording it a reasonable opportunity to reach its full intended audience.

7 82. Google/YouTube's discriminatory policies and application of those policies are not
 8 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to
 9 the nature, purpose, and use of the forum. They impose an unreasonable prior restraint on Plaintiff's
 10 protected political speech, motivated by impermissible discrimination against Plaintiff's identity and
 11 viewpoint.

12 83. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are
 13 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through
 14 both the Google/YouTube algorithms as well as human agents. And Defendants' actions were done
 15 with the intent to deprive Plaintiff and their viewers of their rights under the California constitution.

16 84. As a direct and proximate result of Defendants' violations of clearly established law
 17 regarding public fora, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury
 18 in fact, including lost income, reduced viewership, and damage to brand, reputation, and goodwill, for
 19 which there exists no adequate remedy at law.

20 SECOND CAUSE OF ACTION

21 **(First Amendment of the United States Constitution and/or 42 U.S.C. § 1983)**

22 85. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
 23 of the allegations set forth in paragraphs through 1 through 84 above.

24 86. The First Amendment of the United States Constitution protects the freedom of speech
 25 and association, and against viewpoint discrimination in the access and use of public spaces, quasi-
 26 public spaces, and limited public spaces. It also protects the rights of all Americans to free
 27 association with others.

28

1 87. Defendants created, operate and control the YouTube site, platform and services as a
 2 public forum or its functional equivalent by intentionally and openly dedicating YouTube for public
 3 use and public benefit, inviting the public to utilize YouTube as a forum for free speech. Defendants
 4 further act as state actors because Defendants and the YouTube site perform an exclusively and
 5 traditionally public function by regulating free speech within a public forum. Accordingly, speech
 6 cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on YouTube
 7 on the basis of viewpoint or the identity of the speaker.

8 88. Defendants' actions, and the actions of their agents, deprive Plaintiff of its
 9 constitutional rights. Defendants have restricted Plaintiff's speech and expressive conduct by
 10 adopting and applying subjective, vague, and overbroad criteria that give Defendants unfettered and
 11 unbridled discretion to censor speech for arbitrary, capricious, or nonexistent reasons. Those criteria
 12 further fail to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited
 13 or restricted and, as a result, allow Defendants to censor speech at their whim and based on their
 14 subjective animus towards the speaker or her particular political or religious viewpoint.

15 89. Defendants also apply their censorship criteria, including the Terms of Use and
 16 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content
 17 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted
 18 content posted by PragerU to the YouTube platform but not restricted similar or identical video
 19 content, including identical video content initially produced by PragerU but subsequently copied and
 20 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria
 21 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on
 22 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual
 23 content of the speech.

24 90. Further, because Plaintiff is so restrained and punished because of the speakers
 25 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate
 26 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to
 27 free association and assembly by blocking viewers' access to videos and comments. And
 28

1 Defendants' actions were done with the intent to deprive Plaintiff and other conservative voices of
2 their First Amendment rights.

3 91. No compelling, significant, or legitimate reason justifies demonetizing or restricting
4 Plaintiff's videos. Even if such interests did exist to justify Google/YouTube's restriction and
5 demonetization rules generally, the restrictions imposed on Plaintiff's speech are not narrowly or
6 reasonably tailored to further such interests, because they sweep within their ambit inoffensive and
7 non-graphic discussions intended and designed for educational purposes. Given Google/YouTube's
8 monopolistic control over search results, including video search results, as well as online video
9 streaming, Plaintiff has no alternative channel affording a reasonable opportunity to reach its full
10 intended audience.

92. Google/YouTube's discriminatory policies and application of those policies are not
viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to
the nature, purpose, and use of the forum. Rather, they impose an unreasonable prior restraint on
Plaintiff's protected political speech, motivated by impermissible discrimination against Plaintiff's
identity and viewpoint.

16 93. As a direct and proximate result of Defendants' violations of the clearly established
17 law of public fora, Plaintiff suffered and continues to suffer immediate and irreparable injury in fact,
18 including lost income, decreased viewership, and damage to brand and reputation, for which there
19 exists no adequate remedy at law.

94. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are
arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through
both the Google/YouTube algorithms as well as human agents.

THIRD CAUSE OF ACTION

(California Unruh Civil Rights Act—Civil Code §§ 51, et seq.)

95. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
of the allegations set forth in paragraphs through 1 through 94 above.

27 96. Defendants YouTube and Google host business establishments under the Unruh Civil

1 Rights Act, California Civil Code § 51 et seq. Defendants grant the public unrestricted access to
 2 YouTube for commercial reasons that are at the core of their business model and the source of
 3 virtually all of their revenue.

4 97. Despite their promises of neutrality and a diversity of viewpoints, Defendants engage
 5 in a pattern and practice of intentional discrimination in the provision of their services, including
 6 discriminating against and censoring Plaintiff PragerU's speech based not on the content of speech
 7 but on its political identity and viewpoint. Through the acts complained of herein, Defendants
 8 intentionally denied, and aided or incited in denying, Plaintiff full and equal accommodations,
 9 advantages, privileges, and services by refusing discriminating against it in administering the
 10 YouTube grants program, demonetizing Plaintiff's content, and by placing Plaintiff's videos in
 11 Restricted Mode.

12 98. A substantial motivating reason for Defendants' conduct is Defendants' subjective
 13 perception of Plaintiff's political identity, viewpoints, and religious orientation, as well as those of
 14 others with whom Plaintiff associated. Defendants' discrimination against Plaintiff is arbitrary,
 15 capricious, pretextual, and discriminatory. It is also wholly without any legitimate, reasonable
 16 business interest, as the content of the restricted and demonetized PragerU videos are completely
 17 compliant with the letter and spirit of Defendants' Terms of Use and Community Guidelines.
 18 Google/YouTube are censoring and treating Plaintiff and its videos differently out of animus towards
 19 Plaintiff's identity and views.

20 99. Defendants' wrongful actions were taken with oppression, fraud and/or malice,
 21 effectuated through both the Google/YouTube algorithms as well as manual human review of
 22 Plaintiff's videos and appeals. PragerU has repeatedly attempted to remedy the situation, and
 23 Defendants have repeatedly refused to unrestrict or re-monetize Plaintiff's videos. And not once have
 24 Defendants articulated any good faith reason for their differential treatment.

25 100. As a direct and proximate result of Defendants' unlawful discriminatory actions,
 26 Plaintiff suffered, and continues to suffer, irreparable injury in fact, including but not limited to lower
 27 viewership, lost advertising opportunities otherwise available to other nonprofits, decreased ad
 28

1 revenue, and reputational damage, for which there exists no adequate remedy at law.

2 101. Defendants' violations of the Unruh Act further entitles Plaintiff to recover statutory
 3 damages of up to three times the amount of actual damages in an amount to be proven at trial, or a
 4 minimum of \$4,000 per violation.

5 **FOURTH CAUSE OF ACTION**

6 **(Business and Professions Code § 17200, et seq.)**

7 102. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
 8 of the allegations set forth in paragraphs through 1 through 101 above.

9 103. Defendants have committed acts of unfair competition, as defined by Business and
 10 Professions Code § 17200, by engaging in the practices described above.

11 104. Defendants' policies and practices, and their application of the same to Plaintiff,
 12 constitute unlawful, unfair or fraudulent business acts or practices within the meaning of Business
 13 and Professions Code § 17200. Defendants' policies, as well as their application, violate the policy
 14 and spirit the Unruh Act, the Lanham Act, the California and federal Constitutions, and prior court
 15 decisions. Those actions are likely to mislead the public, and do mislead the public, about YouTube,
 16 Defendants' videos, Plaintiff, and Plaintiff's videos. Content creators, advertisers, and viewers trust
 17 and rely on Defendants for an open marketplace of ideas and expression, and further that when videos
 18 are restricted or demonetized, that those videos are truly and in good faith deemed inappropriate for
 19 viewing by minors or sensitive viewers.

20 105. There is no utility to the public for Defendants' actions, where those restrictions
 21 violate no laws or contractual terms of use and treat Plaintiff and others similarly situated simply
 22 because of their perceived politics and identity of their speaker. And to the extent that any utility to
 23 Defendants' arbitrarily- and discriminatorily-applied policies did exist, that utility is significantly
 24 outweighed by the harm they impose on consumers and the public. Defendants have alternatives to
 25 this conduct that would be less harmful to consumers, but do not adopt or apply them because of their
 26 bias against Plaintiff and others similarly situated.

27 106. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and
 28

1 continues to suffer, immediate and irreparable injury in fact, including lost income, reduced
 2 viewership, and damage to brand, reputation, and goodwill, for which there exists no adequate
 3 remedy at law.

4 107. Defendants' wrongful actions were taken with oppression, fraud and/or malice.

5 **FIFTH CAUSE OF ACTION**

6 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

7 108. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
 8 of the allegations set forth in paragraphs through 1 through 107 above.

9 109. Plaintiff and Defendants entered into written contracts in which Defendants agreed to
 10 provide YouTube access, hosting, streaming, and advertising services to Plaintiff. Those contracts
 11 give Google/YouTube vague, unfettered, and unilateral discretion to remove, restrict, demonetize, or
 12 de-emphasize content as Defendants see fit.

13 110. Implied in those contracts is the implied covenant of good faith and fair dealing. This
 14 is particularly true because, in those contracts, Defendants assumed for themselves unilateral and
 15 unfettered discretionary control over virtually every aspect of their relationship with Plaintiff—
 16 control that Defendants have exercised at their whim, repeatedly and without notice to Plaintiff, and
 17 without an opportunity for meaningful discussion or appeal. To the extent that those discretionary
 18 powers are valid, Defendants are obligated to exercise them fairly and in good faith.

19 111. Plaintiff did all or substantially all of the significant things required of it under its
 20 agreements with Defendants, or was excused from having to do those things. None of Plaintiff's
 21 restricted or demonetized videos violates the letter or spirit of any term in Plaintiff's contracts with
 22 Defendants.

23 112. Defendants were bound by the implied covenant of good faith and fair dealing in their
 24 agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or
 25 diminish Plaintiff's rights and benefits of the parties' agreements. Pursuant to the terms of those
 26 agreements, Plaintiff was supposed to have equal access to a wide audience to promote its messages,
 27 and it was in reliance on Defendants' representations to "help you grow," "discover what works best

28

1 for you,” and “giv[e] you tools, insights and best practices for using your voice and videos,” that it
2 chose YouTube as the host of its videos. Also pursuant to those agreements, it was entitled to some
3 portion of the profits that Defendants were making from Plaintiff’s content. Instead,
4 Google/YouTube have, by the acts and omissions complained of herein, intentionally and tortiously
5 breached the implied covenant of good faith and fair dealing by unfairly interfering with Plaintiff’s
6 rights to receive the benefits of those contracts.

7 113. The foregoing acts and omissions were engaged in by Defendants with the knowledge
8 that they were bound to act consistently with the covenant of good faith and fair dealing. Those acts
9 and omissions were not only failures to act fairly and in good faith, but they were acts of oppression,
10 fraud, and malice.

11 114. As a direct and proximate result of the aforementioned conduct of Defendants,
12 Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact, including lost
13 income, reduced viewership, and damage to brand, reputation, and goodwill, for which there exists no
14 adequate remedy at law.

SIXTH CAUSE OF ACTION

(Lanham Act—15 U.S.C. § 1125 et seq.)

17 115. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
18 of the allegations set forth in paragraphs through 1 through 114 above.

19 116. Google/YouTube are engaged in interstate commerce and competition through
20 hosting, creating, advertising, and soliciting and receiving revenue for advertising, video streaming
21 services on YouTube.com. In addition, Google/YouTube compete with content creators like Plaintiff
22 in the market of online video streaming by creating, hosting, and promoting their own video content.

23 117. Defendants engage in a pattern and practice of knowingly misleading and deceptive
24 advertisement and unfair competition. Defendants advertise YouTube, as a word, term, name,
25 symbol, and device, as a forum for open expression by diverse speakers. Defendants unfairly and
26 deceptively misrepresent the nature, characteristics, and qualities of YouTube’s services and
27 commercial activities as an equal and diverse public forum. Defendants likewise unfairly enhance the

1 image and goodwill of their content, while degrading Plaintiff and its videos by suggesting that
 2 Plaintiff and its speech are offensive, hateful, or inappropriate.

3 118. Defendants' false representations and unfair competition deceived, and had a tendency
 4 to deceive, substantial segments of Defendants' audiences, including content creators like Plaintiff,
 5 viewers, and advertisers, who are induced to traffic and do business with YouTube, and to view (or
 6 not view) particular videos. As a direct and proximate result of Defendants' actions complained of
 7 herein, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact,
 8 including in the form of lower viewership, decreased ad revenue, a reduction in advertisers willing to
 9 purchase advertisements shown on Plaintiff's videos, diverted viewership, and damage to its brand,
 10 reputation and goodwill.

11 119. Defendants' wrongful actions were taken with oppression, fraud and/or malice.
 12 PragerU has repeatedly attempted to remedy the situation, and Defendants have repeatedly refused to
 13 unrestrict or re-monetize Plaintiff's videos. And not once have Defendants articulated any reason for
 14 their differential treatment. Their treatment of videos like those of PragerU's is part of their normal
 15 course of business, effectuated through both the Google/YouTube algorithms as well as their agents
 16 manually reviewing Plaintiff's videos and appeals.

SEVENTH CAUSE OF ACTION

(Declaratory Relief)

19 120. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
 20 of the allegations set forth in paragraphs through 1 through 119 above.

21 121. An actual controversy exists between Plaintiff and Defendants as to whether
 22 Defendants' policies and procedures, and their application thereof, violate the Unruh Civil Rights
 23 Act, the Lanham Act, and the California and federal constitutions. The correct interpretation is that
 24 Defendants' policies and procedures, facially and as applied, violate the Unruh Act, the Lanham Act,
 25 and violate Plaintiff's speech and association rights under both the California and United States
 26 constitutions.

27 122. Unless the court issues an appropriate declaration of rights, the parties will not know
 28

1 whether Defendants' policies and procedures, and Defendants' application of their policies and
 2 procedures, comply with the law, including the federal and state constitutions, and there will continue
 3 to be disputes and controversy surrounding Defendants' policies and procedures and application
 4 thereof.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 1. For a declaratory judgment that Defendants have violated and continue to violate
 8 PragerU's free speech rights, both facially and as applied, under the First Amendment of the United
 9 States Constitution, and/or Article I, section 2 of the California Constitution;

10 2. For an injunction requiring Defendants to (i) cease and desist from capriciously
 11 restricting, demonetizing, or otherwise censoring any content of PragerU videos uploaded to the
 12 YouTube site and (ii) from censoring or restricting speech based on their unfettered discretion or the
 13 use or application of arbitrary, capricious, vague, unspecified, or subjective criteria guidelines;

14 3. For compensatory, special, and statutory damages in an amount to be proven at trial,
 15 including statutory damages pursuant to, *inter alia*, Civil Code § 51, 51.5, 52, Civil Procedure Code §
 16 1021.5, 15 U.S.C. § 1117, 42 U.S.C. §§ 1981, 1983;

17 4. A civil penalty of \$2,500 for each violation pursuant to Business and Professions Code
 18 §§ 17200, 17206, and 17536;

19 5. For punitive damages and exemplary damages in an amount to be proved at trial;

20 6. For restitution of financial losses or harm caused by Defendants conduct and in an
 21 amount to be proven at trial;

22 7. Attorney's fees and costs of suit;

23 8. For prejudgment and post-judgment interest; and

24 9. For any and all other relief that the Court deems just and proper.

25 ///

26 ///

27 ///

JURY DEMAND

Plaintiff demands trial by jury on all issues of law so triable.

DATED: October 23, 2017

Respectfully submitted,

BROWNE GEORGE ROSS LLP

Pete Wilson

Eric M. George

Peter Obstler

David S. Wakukawa

By: /s/ Peter Obstler

Peter Obstler

Attnorneys for Plaintiff PRAGER UNIVERSITY